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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

OCT 25 1996

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CHAIRMAN
MARCIA WEEKS
COMMISSIONER
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COMMISSIONER

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RT

IN THE MATTER OF THE PETITION OF)
TCG PHOENIX FOR ARBITRATION WITH)
U S WEST COMMUNICATIONS, INC. OF)
INTERCONNECTION RATES, TERMS, AND)
CONDITIONS PURSUANT TO 47 U.S.C.)
§ 252(b) OF THE TELECOMMUNICATIONS)
ACT OF 1996.)

Docket Nos.

U-3016-96-402

E-1051-96-402

COMMENTS OF AMERICAN COMMUNICATIONS
SERVICES, INC.

American Communications Services Inc. ("ACSI") hereby submits its exceptions to the recommendation of the Arbitrators regarding the Petition for Arbitration of TCG Phoenix ("TCG") and US West Communications, Inc. ("US West") wherein the Arbitrators proposed to resolve the open issues in the interconnection agreement between TCG and US West. ACSI maintains that the Arbitrators' recommendations regarding the TCG/US West arbitration (as well as the recommendations issued by the Arbitrators in Docket Nos. U-2752-96-362 and E-1051-96-362 regarding the Petition for Arbitration of MFS Communications Company, Inc. and US West Communications, Inc.) deal effectively with a broad array of complex issues. ACSI believes that, with limited exception, the recommendations in the above-referenced dockets will promote competition in the market for local telecommunications services in

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1 Arizona and will benefit Arizona consumers greatly. However, ACSI is
2 concerned about the Arbitrators' recommendation to reject the
3 inclusion of a "most favored nations" provision in the TCG/US West
4 interconnection agreement and takes exception to that
5 recommendation.¹

6 Section 252(i) of the Telecommunications Act of 1996 (the "1996
7 Act") requires each incumbent local exchange company ("ILEC") to make
8 available to any requesting carrier any interconnection, service, or
9 network element provided under an agreement to which it is a party.
10 In addition, under Sections 251(c)(2) and 251(c)(3), interconnection
11 and individually unbundled elements must be made available pursuant
12 to nondiscriminatory rates, terms and conditions. These provisions
13 are major, though not exclusive, tools for preventing discrimination
14 in access to unbundled network elements as mandated by Section
15 251(c)(3).

16 Specifically, Section 252(i) states that a "local exchange
17 carrier shall make available any interconnection, service, or network
18 element provided under an agreement approved under [Section 252] to
19 which it is a party to any other requesting telecommunications
20 carrier upon the same terms and conditions as those provided in the
21 agreement." Thus, in enacting Section 251(i), Congress distinguished
22 between "any interconnection, service, or network element[s] provided
23 under an agreement," which the 1996 Act lists individually, and
24 interconnection agreements in their totality. Had Congress not
25

26 ¹ See Recommendation of the Arbitrator, Docket Nos. U-3106-96-
402 and E-1051-96-402, p. 23 (released October 17, 1996).

1 intended to permit requesting carriers to elect specific provisions,
2 it would have required local exchange carriers to make available any
3 agreement to which it is a party, not any interconnection, service,
4 or network element provided under an agreement. Therefore, ACSI
5 respectfully submits that Congress intended to permit requesting
6 carriers to select portions of agreements without having to take the
7 entire agreement.² Accordingly, the Arbitrators erred in not
8 requiring US West to include such a provision in its agreement with
9 TCG.

10 Requiring an ILEC to make portions of agreements available is
11 sound public policy. The issues addressed by the interconnection
12 agreements submitted for arbitration relate to critical, and in some
13 cases essential, inputs into both the features and pricing of
14 competitive local exchange service offerings. The importance to
15 competitive local exchange companies ("CLECs") such as ACSI of the
16 availability, features, terms, conditions and pricing of each of
17 these services and facilities cannot be overstated.

18 Although facilities such as those named above are equally
19 essential to all CLECs, not all CLECs have the same bargaining
20 leverage or negotiating resources. If larger competitors are able to
21

22 ² ACSI's position is consistent with the FCC's interpretation
23 of this provision. See First Report and Order, *Implementation of the Local
24 Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98,
25 ¶ 1309-10 (released August 8, 1996) ("Interconnection Order") ("We
26 conclude that the text of section 252(i) supports requesting
carriers' ability to choose among individual provisions contained in
publicly filed interconnection arrangements."). Although this
interpretation is not binding upon the Commission at this time, ACSI
submits that the FCC's conclusion is sound as a matter of policy.

1 use their advantageous position to extract materially better terms
2 than smaller competitors are able to get, they will have an artifi-
3 cial competitive advantage. Such an artificial competitive advantage
4 will hinder, if not destroy, the ability of smaller competitors to
5 effectively compete in the market for local telecommunications
6 services in Arizona.

7 Moreover, if a competitor is limited only to accepting an entire
8 agreement that has been negotiated by a larger competitor, the
9 smaller competitor must take not only the provisions that are well-
10 suited to its circumstances and business plans, but also provisions
11 that are not so well-suited. The fact that the agreement is
12 appropriately tailored to meet the needs of the CLEC that negotiated
13 the agreement does not mean that the agreement *in toto* is appropriately
14 tailored to meet the needs of another CLEC. Thus, smaller compe-
15 titors would have a "Hobson's choice" of taking what is offered or
16 nothing at all. They would have to either expend resources that they
17 do not have in order to negotiate their own agreement or take an
18 entire agreement that is not tailored to suit their business needs.
19 In this particular circumstance, ACSI maintains that one size does
20 not fit all and for competition to flourish, smaller competitors must
21 have access to preferred provisions without having to commit to
22 provisions that are not appropriate to their businesses.

23 Thus, ACSI urges the Commission to reject the Arbitrators'
24 decision not to require US West to offer most favored nation
25 treatment to TCG. Most favored nations provisions which permit
26 smaller competitors to choose specific provisions from other publicly

1 filed contracts are fundamental to the ability of smaller competitors
2 such as ACSI to develop fair and appropriately tailored intercon-
3 nection agreements. Without the ability to selectively choose
4 provisions from different agreements, smaller competitors will not be
5 able to negotiate appropriately tailored interconnection agreements.
6 This will undermine the development of full-fledged competition in
7 the market for local exchange services in Arizona.

8
9 October 25, 1996.

10 Respectfully submitted

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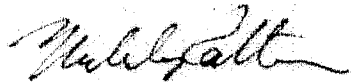
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